



California Fair Political Practices Commission

April 28, 1989

Robert N. Joehnck
Attorney at Law
7430 Morningside Drive
Loomis, CA 95650

Re: Your Request for Advice
Our File No. A-89-192

Dear Mr. Joehnck:

This is in response to your request for advice regarding the responsibilities of an elected councilmember under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Your letter raises questions under other provisions of law, such as Government Code Section 1090. We do not provide advice concerning laws other than the Act. Please consult with the Attorney General's office regarding other applicable laws which may apply to the decision before the councilmember.

QUESTION

May a councilmember vote or otherwise participate in a decision affecting the duties of the elected town clerk who is the councilmember's father?

CONCLUSION

A councilmember may vote or otherwise participate in a decision affecting the duties of the elected town clerk who is the councilmember's father. For purposes of the Act, an official's father is not a member of his "immediate family." Therefore, no conflict of interest arises under the Act unless the father has been a source of income to the public official within the preceding 12 months.

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

FACTS

Loomis is a general law city governed by five elected councilmembers. The town also has an elected town treasurer and an elected town clerk. One of the five elected councilmembers is the father of the elected town clerk. The salary of the town clerk is established by the town council.

The town clerk is the accounting officer of the town by statute (Government Code Section 40802), and has certain statutory responsibilities for publishing and posting financial statements of the town. (Government Code Sections 40804 and 40805.) The duties of the town clerk under Sections 40802, 40804 and 40805 may be transferred to a director of finance upon passage of an ordinance establishing the office and duties of the director of finance. (Government Code Section 40805.5.)

On December 13, 1988, the town council adopted ordinance No. 72 as an urgency ordinance effective immediately. The ordinance, among other things, created the office of town manager and allocated the duties of director of finance to the town manager. (Ordinance No. 72, Section 5.1, Services as Finance Director.)

Within 30 days of adoption of ordinance No. 72, a referendum petition was filed with the town requesting that Section 5.1 of the ordinance be placed on the ballot or, in the alternative, requesting the town council to repeal Section 5.1. The town council determined that it would neither repeal Section 5.1 nor submit it to the vote of the electorate.

At a subsequent date, the town clerk and another citizen requested that the town council reopen the issue of whether the council would repeal Section 5.1 or place it on the ballot. This decision is pending before the council.

ANALYSIS

The Political Reform Act prohibits public officials from making, participating in making, or using their official positions to influence the making of any decision in which they have a financial interest. (Section 87100.) Councilmembers are public officials. (Section 82048.)

An official has a financial interest in a decision if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect upon the public generally, on the official or any member of the official's immediate family or on any person which has been a source of income to the official of \$250 or more in the preceding 12 months. (Section 87103(c), Regulation 18702.1(a)(1), copy enclosed.) "Immediate family" means the spouse and dependent children of the public official. (Section 82029.)

Robert N. Joehnck
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Because a public official's father is not a member of the official's "immediate family" for purposes of the Act, the father-son relationship does not, by itself, create a conflict of interest for the councilmember. The councilmember could be required to disqualify himself from the decision in question only if the town clerk, who is the public official's father, has been a source of income to the official in the sum of \$250 or more within the 12 months preceding the decision.

You have stated in your letter requesting advice that the councilmember has no financial arrangements with his father, the town clerk, relating to the issue in question. You have also stated that no business enterprise of the councilmember or his father nor any real or personal property of either would be affected by a decision concerning the duties of the town clerk. We interpret these statements to mean that the town clerk has not been a source of income to the councilmember in the preceding 12 months.

Consequently, under the facts as presented, and assuming that the town clerk has not been a source of income to the councilmember within the preceding 12 months, the councilmember may participate in decisions affecting the duties of the town clerk, and his salary.

Should you have any questions regarding the above, do not hesitate to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Blanca M. Breeze
Counsel, Legal Division

KED:BMB:plh

Enclosure

Town Of Loomis

P. O. Box 1327
LOOMIS, CA 95650
(916) 652-9204

APR 3 8 19 1989

March 30, 1989

Fair Political Practices Commission
428 J Street, Suite 800
P. O. Box 807
Sacramento, CA 95814

Ladies/Gentlemen:

The Town Council of the Town of Loomis ("Town") requests the Commission provide written advice pursuant to Government Code Section 83114(b) on the following issue:

May an elected Councilperson vote or otherwise participate in a decision of the Town Council to consider or reconsider the question of whether to repeal or place on the ballot an Ordinance concerning which a referendum petition has been filed with the Town, where the Ordinance in question effects the duties of the elected Town Clerk who is the father of the Councilperson in question?

Factual Background. Loomis is a Town incorporated as a general law city under the laws of the State of California. It is governed by a Town Council composed of 5 elected Councilpersons who run "at large". The Town also has an elected Town Treasurer and an elected Town Clerk.

One of the five elected Councilpersons on the Town Council is the son of the elected Town Clerk. The Councilperson in question was elected to a 4 year term at municipal elections held in November, 1986. The Town Clerk was elected to a 4 year term at a municipal election held in November, 1988.

The salary of the Town Clerk is established by the Town Council (Gov. Code, Sec. 36517). Since the incorporation of the Town in 1984 this salary has been established at the figure of \$100.00 per month.

The Town Clerk is the "accounting officer" of the Town by statute (Gov. Code, Sec. 40802), and has certain responsibilities for publishing and posting financial statements of the Town imposed by State Law (Gov. Code, Secs. 40804 and 40805).

The duties of the Town Clerk under Gov. Code, Secs. 40802, 40804 and 40805 just cited, may be transferred to a Director of Finance when the office and duties of the Director of Finance have been established by an Ordinance of the Town (Gov. Code, Sec. 40805.5).

On December 13, 1988, the Town Council adopted Ordinance No. 72 (copy enclosed) as an urgency ordinance effective immediately. Within 30 days thereafter a referendum petition (facsimile copy enclosed) was filed with the Town pursuant to the provisions of Elections Code Sec. 4050 et. seq. The petition was determined to have signatures of the requisite number of voters to place the portions of the Ordinance which were the subject of the referendum petition on the ballot or, in the alternative, to require the Town Council to itself repeal the parts of the Ordinance in question (Elec. Code, Sec. 4055).

The undersigned, as Town Attorney, issued a formal opinion that the portions of Ordinance 72 which the referendum petition sought to have repealed or alternatively voted on by the electorate, were not subject to referendum proceedings under California law. The Town Council then determined that it would neither repeal the parts of the Ordinance in question nor would it submit those provisions to a vote of the electorate.

At a subsequent date, the Town Clerk and another citizen requested that the Town Council reopen the question of whether the Council would repeal the effected parts of Ordinance No. 72 or place them on the ballot. At this juncture the issue was raised as to whether the Councilperson who is the son of the Town Clerk could participate in the decision to reopen or not reopen the matter, and if the matter was reopened, and substantive decision of the Council on the issues. This request for an advice letter has the support of all five elected members of the Town Council.

Analysis. It may be assumed for purposes of your advice letter that one or more provisions of Secs. 5.1(a) through (c) of Ordinance No. 72 effectuate a transfer of the duties of the Town Clerk listed in those sections from the Town Clerk to the Town Finance Director, who in this case is also the Town Manager. No adjustments in the salary of the Town Clerk are affected by Ordinance No. 72 nor by the referendum petition. No other attributes of the office of Town Clerk --- hours of operation, working situation, etc. are affected either by Ordinance No. 72 or the referendum petition.

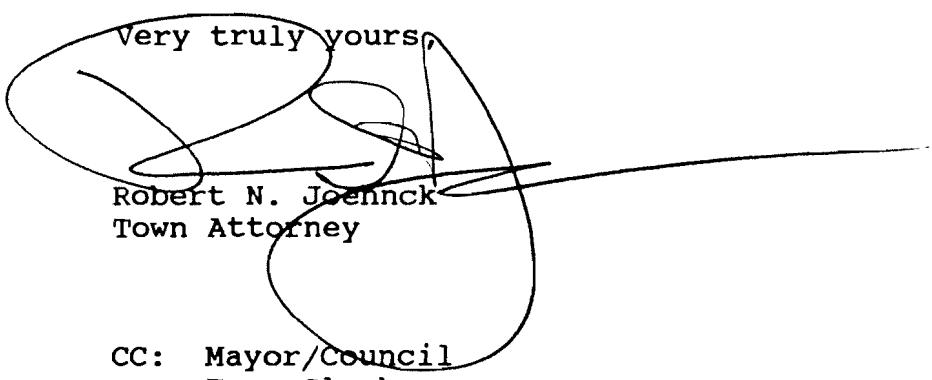
I am informed by the Councilperson in question that he has no financial arrangements with his father the Town Clerk relating to the issue in question. I am further told that there is no business enterprise of the Councilperson or his father nor any real or personal property of either that would be affected by a decision on the issues in question.

In the absence of any such arrangements, it appears that there is no "financial interest" at issue in this matter within the meaning of Sec. 87100 of the Government Code. While it is perhaps possible that (from a psychological standpoint) the decisions to be made could affect the possibility of the expectation of an inheritance or bequest, neither would be counted as income under Gov. Code, Sec. 82030. In the absence of any understanding concerning inheritance as related to the issues in question (and I am assured by both the Town Clerk and his son, there are none), it does not appear that the participation of the Councilperson in question is precluded by the provisions of the Political Reform Act of 1974, as amended.

Appended to this letter are the names of all pertinent Town officials and their addresses and telephone numbers.

Your attention to this matter is appreciated.

Very truly yours,



Robert N. Joehnck
Town Attorney

CC: Mayor/Council
Town Clerk

Enclosures: 3

RNJ/bjb

Town Of Loomis

P. O. Box 1327
LOOMIS, CA 95650
(916) 652-9204

March 30, 1989

Fair Political Practices Commission
428 J Street, Suite 800
P. O. Box 807
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Your attention to this matter is appreciated.

Very truly yours,



Robert N. Joennck
Town Attorney

CC: Mayor/Council
Town Clerk

Enclosures: 3

RNJ/bjb

AN ORDINANCE OF THE COUNCIL OF THE TOWN OF
LOOMIS RELATING TO THE OFFICE TO TOWN MANAGER
AND PROVIDING FOR ITS ADOPTION AS AN URGENCY ORDINANCE

THE COUNCIL OF THE TOWN OF LOOMIS ORDAINS AS FOLLOWS:

**SECTION 1. Office Created, Term, Residence Requirements,
Limited Eligibility.**

The Office of the Town Manager is created and established. The Town Manager shall be appointed by the Council wholly on the basis of administrative and executive ability and qualifications and shall hold office for and during the pleasure of the Council.

Residence in the Town at the time of appointment of a Town Manager shall not be required as a condition of the appointment.

SECTION 2. Temporary Manager.

The Deputy Town Manager shall serve as Manager Pro Tempore during any temporary absence or disability of the Town Manager. In the event there is no Deputy, the Town Manager by a letter filed with the Town Clerk, shall designate a qualified Town Administrative Officer to exercise the powers and perform the duties of Manager during the temporary absence or disability. In the event the Town Manager's absence or disability extends over a three-month period, the Town Council may, after the three-month period, appoint an Acting Town Manager.

SECTION 3. Compensation.

The Town Manager shall receive such compensation and expense allowance as the Town Council shall from time to time determine, and such compensation shall be a proper charge against such funds of the Town as the Town Council shall designate.

The Town Manager shall be reimbursed for all actual and necessary expenses incurred in the performance of official duties, including those incurred when traveling on business pertaining to the Town.

On termination of employment of the Town Manager by reason of involuntary removal from office for other than wilful misconduct in office, the Town Manager shall receive cash severance pay in accordance with the terms of agreement for employment with the Town.

SECTION 4. Powers and Duties.

The Town Manager shall be the administrative head of the government of the Town under the direction and control of the Town Council except as otherwise provided in this chapter. The Town Manager shall be responsible for the efficient administration of all the affairs of the Town which are under this control. In addition to such general powers as administrative head, and not as a limitation thereon, it shall be the duty and the powers of the position as set forth in the section as follows:

- a) To enforce all laws and ordinances of the Town and to see that all franchises, contracts, permits and privileges granted by the Town Council are faithfully observed.

- b) To control, order and give directions to all heads of departments and to subordinate officers and employees of the Town under their jurisdiction through their department heads.
- c) Appoint, remove, promote and demote any and all officers and employees of the Town, except elective officers and the Town Attorney, subject to the personnel rules and regulations of the Town.
- d) To conduct studies and effect such administrative reorganization of offices, positions or units under the Manager's direction as may be indicated in the interest of efficient, effective and economical conduct of the Town's business.
- e) To recommend to the Town Council for adoption such measures and ordinances as deemed necessary.
- f) To attend all meetings of the Town Council unless excused therefrom by the Mayor individually or the Town Council as a whole, except when removal is under consideration.
- g) To prepare and submit the proposed annual budget and the proposed annual salary plan to the Town Council for its approval.
- h) Serves as Purchasing Agent under the requirements set forth by Ordinance. No expenditures shall be submitted or recommended to the Town Council except on report and approval of the Town Manager.
- i) To make investigations into the affairs of the Town and any department or division thereof and any contract or the proper performance of any obligations of the Town; further, it shall be the duty of the Town Manager to investigate all complaints in relation to matters concerning the administration of the Town government and in regard to the service maintained by the public utilities in the Town and to see that all franchises and permits granted by the Town are faithfully performed and observed.
- j) To provide general supervision over all public buildings, and all other public properties which are under the control and jurisdiction of the Town Council.
- k) The Manager shall prepare or cause to be prepared in draft form agendas for all Town Council meetings for review with the Mayor for finalization.
- l) Receive documents addressed to the Town Council and immediately have copies forwarded to each Councilmember with response made as appropriate in the due course of business.
- m) To perform such other duties and exercise such other powers as may be delegated from time to time by Ordinance, resolution or other official action of the Town Council.

SECTION 5. Departmental Cooperation.

The Town Council and its members shall deal with the administrative services of the Town only through the Town Manager, except for the purpose of inquiry, and neither the Town Council nor any member thereof shall give orders to any subordinates of the Town Manager. The Town Manager shall take orders and instructions from the Town Council only when sitting in a duly convened meeting of the Town Council and no individual Councilmember shall give

orders or instructions to the Town Manager. The Town Council shall instruct the Town Manager in matters of policy. Any action, determination or omission of the Town Manager shall be subject to review by the Town Council. The Town Council may not overrule, change or modify any such action, determination or omission except by the affirmative vote of at least three (3) members of the Town Council.

It shall be the duty of all subordinate officers and the Town Attorney to assist the Town Manager in administering the affairs of the Town efficiently, economically and harmoniously.

The Town Manager may attend any and all meeting of the Planning Commission, or any other commission, board or committee created by the Town Council. At such meeting, the Town Manager shall be heard by such commissions, boards or committees as to all matters the Manager presents. Shall inform such members as to the status of any matter being considered by the Town Council, and shall cooperate to the fullest extent with the members of all commissions, boards or committees appointed by the Town Council.

SECTION 5.1. Services as Finance Director.

The Town Manager shall perform or cause to have performed the following duties:

- a) Maintenance of financial records. To maintain all records readily reflecting the financial condition the Town and all of its departments.
- b) Report for fiscal year. At the end of each fiscal year, to prepare and present to the Town Council the summary statement of receipts and disbursements, by departments and funds, including opening and closing fund balances of the Town treasury.
- c) Publication of financial statement. To cause the financial statement of the Town to be published in accordance with the provisions of sections 4804 and 4805 of the Government Code of the state.
- d) Compilation of financial information for budget. To compile all financial information necessary for the preparation of the Town's budget and make such information available to the officer whose responsibility it is to prepare the budget.
- e) Quarterly financial report. To prepare a monthly statement of all receipts and disbursements in sufficient detail to show the financial condition of the Town and each of its departments.
- f) Licenses. To supervise and be in charge of licenses, issuance and inspection.
- g) Payroll records. To supervise and be in charge of all payroll records.
- h) Insurance policies. To maintain a record of all insurance policies and their expiration dates.
- i) Collection of taxes and assessments, etc. To see that all taxes, assessments and other fees and revenues of the Town or for whose collection the Town is responsible, and all other money received by the Town from the county, state or federal government or from any court, office, department or agency of the Town are collected, and perform such duties that are from time to time assigned by the Town Council.

SECTION 5.2. Serves as Personnel Director

The Town Manager shall serve as Personnel Director and perform the personnel functions as set forth in the Personnel Ordinance.

SECTION 5.3. Designation of employees to perform functions.

Wherever in this Code a function is specified to be performed by a particular officer other than the Town Attorney, Town Clerk, or Town Treasurer, the Town Manager may designate any legally qualified Town employee to perform such functions.

SECTION 5.4. Bond Required.

The Town Manager shall furnish a corporate surety bond to be approved by the Town Council, in such sum as may be determined by the Town Council, and such bond shall be conditioned upon the faithful performance of the duties imposed upon the Town Manager as prescribed in this article. Any premium for such bond shall be a proper charge against the Town.

SECTION 6. Removal

The removal of the Town Manager shall be effected only by a majority vote of the whole Council as then constituted, convened in a regular Council meeting, subject, however, to the provisions of this section that follows.

In removing the Town Manager, except for wilful misconduct, the Town Council shall use its uncontrolled discretion and its action shall be final and shall not depend upon any particular showing or degree of proof at a hearing, the purpose of which is to allow the Town Manager to present to the Town Council grounds of opposition to removal prior to its action.

Notwithstanding these provisions, the Town Manager shall not be removed from office, other than for misconduct in office, during or within a period of forty-five (45) days next succeeding any general municipal election held in the Town at which election a member of the Town Council is elected. The purpose of this provision is to allow any newly-elected member of the Town Council or a reorganized Town Council to observe the actions and ability of the Town Manager in the performance of the powers and duties of his office. After the expiration of such forty-five day period aforementioned, all provisions as to the removal of the Town Manager shall once again apply and be effective.

In the event the intended removal of the Town Manager is for wilful misconduct in office, written notice to the Town Manager as provided in this section shall state that the reason for removal is wilful misconduct in office and shall state specific facts which constitute such wilful misconduct. The procedure for hearing and for suspension pending hearing shall be followed as provided for in the Town Manager's contract. A determination of wilful misconduct in office shall be evidenced by specific findings of facts constituting such wilful misconduct. The determination of what constitutes wilful misconduct shall be within the sole discretion of the Town Council provided that it shall relate to the welfare of the Town.

Wilful misconduct includes conduct directly related to conduct in office and directly related to the duties of the office. It includes the refusal to follow the lawful directions of the Town Council. It also includes conduct not directly related to the performance of official duties of the office when such conduct has a direct and harmful effect on the welfare of the Town. Evidence of such direct and harmful effect shall include, but shall not be limited to, conviction of a felony.

SECTION 7. Agreements With Council.

Nothing in this Ordinance shall be construed as a limitation on the power or authority of the Town Council to enter into any supplemental agreement with the Town Manager delineating additional terms and conditions of employment not inconsistent with any provisions of this chapter.

SECTION 8. Posting.

The Town Clerk shall cause this Ordinance to be posted at three (3) locations within fifteen (15) days after its passage; shall certify to the adoption and posting of this Ordinance; and shall cause this Ordinance and its certification to be entered in the Book of Ordinances of this Town.

SECTION 9.

Ordinance No. 5 is hereby repealed.

SECTION 10. URGENCY.

In order to provide for the orderly conduct of government and the allocation of duties, this Ordinance, being an urgency ordinance, is necessary for the immediate protection of the public safety, health and general welfare shall take effect immediately upon its adoption.

The foregoing Ordinance was introduced, adopted, and ordered posted at a meeting of the Council held on December 13, 1988, by the following vote:

AYES: Mayor Ireland, Councilmembers Crespillo, Fellers,
Hineline

NOES: Councilmember Scherer

ABSENT: None

/s/ John Ireland
MAYOR

ATTEST:

/s/ Patricia C. Astleford
Deputy Town Clerk

"REFERENDUM AGAINST AN ORDINANCE PASSED BY THE TOWN COUNCIL"

We, the undersigned registered voters of the Town of Loomis, pursuant to Elections Code Section 4051 et seq., hereby protest against the adoption of Ordinance No. 72, Section 5.1, which provides for the Town Manager to perform or cause to have performed the services as Finance Director. The text of Ordinance 72, Section 5.1, which we hereby protest, is as follows:

SECTION 5.1. Services as Finance Director.

The Town Manager shall perform or cause to have performed the following duties:

- a) Maintenance of financial records. To maintain all records readily reflecting the financial condition the Town and each of its departments.
- b) Report for fiscal year. At the end of each fiscal year, to prepare and present to the Town Council the summary statement of receipts and disbursements, by departments and funds, including opening and closing fund balances of the Town treasury.
- c) Publication of financial statement. To cause the financial statement of the Town to be published in accordance with the provisions of sections 4804 and 4805 of the Government Code of the state.
- d) Compilation of financial information for budget. To compile all financial information necessary for the preparation of the Town's budget and make such information available to the officer whose responsibility it is to prepare the budget.
- e) Quarterly financial report. To prepare a monthly statement of all receipts and disbursements in sufficient detail to show the financial condition of the Town and each of its departments.
- f) Licenses. To supervise and be in charge of licenses, issuance and inspection.
- g) Payroll records. To supervise and be in charge of all payroll records.
- h) Insurance policies. To maintain a record of all insurance policies and their expiration dates.
- i) Collection of taxes and assessments, etc. To see that all taxes, assessments and other fees and revenue of the Town or for whose collection the Town is responsible, and all other money received by the Town from the county, state or federal government or from any court, office, department or agency of the Town are collected, and perform such duties that are from time to time assigned by the Town Council.

We demand that the Town Council reconsider Ordinance No. 72, Section 5.1, and if the Town Council does not entirely repeal Ordinance No. 72, Section 5.1, that it submit Ordinance No. 72, Section 5.1 to the voters as required by Elections Code Section 4055.

This column for
official use only

1	PRINT YOUR NAME	RESIDENCE ADDRESS	
	YOUR SIGNATURE AS REGISTERED TO VOTE	CITY	ZIP
2	PRINT YOUR NAME	RESIDENCE ADDRESS	
	YOUR SIGNATURE AS REGISTERED TO VOTE	CITY	ZIP
3	PRINT YOUR NAME	RESIDENCE ADDRESS	
	YOUR SIGNATURE AS REGISTERED TO VOTE	CITY	ZIP
4	PRINT YOUR NAME	RESIDENCE ADDRESS	
	YOUR SIGNATURE AS REGISTERED TO VOTE	CITY	ZIP
5	PRINT YOUR NAME	RESIDENCE ADDRESS	
	YOUR SIGNATURE AS REGISTERED TO VOTE	CITY	ZIP

DECLARATION OF CIRCULATOR

(to be completed after above signatures have been obtained)

I, _____, am registered to vote in the County (or City and County) of _____.

My residence address is _____.

I circulated this section of the petition and saw each of the appended signatures being written. Each signature on this petition is, to the best of my information and belief, the genuine signature of the person whose name it purports to be. All signatures on this document

were obtained between the dates of _____ and _____.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, 19____ at _____.

(Signature of circulator)

Town Of Loomis

P. O. Box 1327
LOOMIS, CA 95650
(916) 652-9204

TOWN COUNCIL

HOME PHONE

BUSINESS PHONE

Mayor

Hazel Hineline-----652-6010
5985 Barton Road
Loomis, CA 95650

Mayor pro tempore

Gretchen Crespillo-----652-6509
3521 Sierra College Blvd.
Loomis, CA 95650

Councilmembers

John Ireland-----652-6992-----645-8191
3777 Bankhead Road
Loomis, CA 95650

Greg Fellers-----652-0924-----652-5816
3344 Opal Lane
Loomis, CA 95650

Walt Scherer-----652-9328-----323-2819
P. O. Box 1231
Loomis, CA 95650

Town Clerk

Henry Scherer-----652-7876-----652-9204
P. O. Box 1231
Loomis, CA 95650

Town Attorney

Robert N. Joehnck-----791-4621-----791-3091
7430 Morningside Drive
Loomis, CA 95650



California Fair Political Practices Commission

April 4, 1989

Robert N. Joehnck
Loomis Town Attorney
P.O. Box 1327
Loomis, CA 95650

Re: Letter No. 89-192

Dear Mr. Joehnck:

Your letter requesting advice under the Political Reform Act was received on April 3, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blanca Breeze an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh